

23

UNITED STATES DISTRICT COURT

for the
Eastern District of Michigan

In the Matter of the Search of)
 (Briefly describe the property to be searched)
 or identify the person by name and address)
 Facebook Accounts related to Bernard Wesley Allen and Mar-)
 kel Brown, described more fully in Attachment A)

) Case:2:14-mc-51198
) Judge: Steeh, George Caram
) Filed: 09-05-2014 At 11:14 AM
) IN RE:SEALED MATTER(SSW)(MLW)

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

See Attachment A

located in the Northern District of California, there is now concealed (identify the person or describe the property to be seized):

See Attachment B

The basis for the search under Fed.R.Crim.P.41(c) is (check one or more):

evidence of a crime;
 contraband, fruits of crime, or other items illegally possessed;
 property designed for use, intended for use, or used in committing a crime;
 a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

<i>Code Section</i>	<i>Offense Description</i>
18 U.S.C. section 2113, 924(c)	Bank Robbery and Use of a Firearm in relation to a Crime of Violence

The application is based on these facts:

See attached AFFIDAVIT.

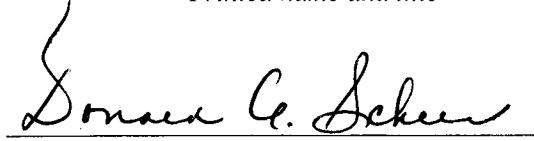
Continued on the attached sheet.
 Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.



 Applicant's signature

Special Agent Juan M. Herrera

Printed name and title



 Judge's signature

Donald A. Scheer, U.S. Magistrate Judge

Printed name and title

Sworn to before me and signed in my presence.

Date: September 5, 2014

City and state: Detroit, Michigan

**AFFIDAVIT IN SUPPORT OF
AN APPLICATION FOR A SEARCH WARRANT**

I, Juan M. Herrera, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I am a Special Agent with the Federal Bureau of Investigation (FBI) and have been employed as such for approximately nine and one half years. During this time, I have investigated violent crime investigations, to include armed robberies of armored trucks.

2. I make this affidavit in support of an application for a search warrant for information associated with certain Facebook user IDs stored at premises owned, maintained, controlled, or operated by Facebook Inc. ("Facebook"), a social networking company headquartered in Menlo Park, California. The information to be searched is described in the following paragraphs and in Attachment A. This affidavit is made in support of an application for a search warrant under 18 U.S.C. §§ 2703(a), 2703(b)(1)(A), and 2703(c)(1)(A) to require Facebook to disclose to the government records and other information in its possession, pertaining to the subscriber or customer associated with the user IDs.

3. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other agents and witnesses.

This affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

4. Based on my training and experience and the facts as set forth in this affidavit, there is probable cause to believe that violations of Title 18, United States Code, Section 2113 (bank robbery), and Title 18, United States Code, Section 924(c) (use of a firearm during and in relation to a crime of violence) were committed by Bernard Wesley Allen, and possibly Jerome Anthony Bankston and other unknown persons. There is also probable cause to search the information described in Attachment A for evidence of these crimes, as described in Attachment B. Specifically, this search warrant application seeks authorization to search the Facebook accounts of user names: (1) bernard.b.allen.7 (Bernard Wesley Allen) (ID: 100000946694739), and (2) Mar-Kel Brown (user ID unknown) for evidence related to the above listed crimes.

PROBABLE CAUSE

5. On August 28, 2014, at approximately 12:50 p.m., a Gardaworld Armored Car (GAC) company truck made a scheduled stop at the Bank of America branch located at 37370 Gratiot Avenue, Clinton Township, Michigan. The truck was there to deliver money to the bank. The messenger exited the truck and proceeded to grab a dolly carrying approximately \$281,500.00 in United States currency, including coin and bills. As the messenger proceeded towards the bank,

an unknown black male subject (Subject 1) exited the passenger side of a silver colored Chrysler Voyager mini-van, later determined to be stolen, aimed a silver 357 revolver at the messenger and announced a robbery. Subject 1 grabbed a black bag enclosing the bills. The messenger then retrieved his firearm. An exchange of gunfire ensued between the messenger and Subject 1 that resulted in Subject 1 being fatally shot. A second subject (Subject 2) fled in the stolen mini-van. The messenger shot several rounds at Subject 2/mini-van. No money was taken.

6. The mini-van was located a short time later on the street in front of 22921 Stair Street, Clinton Township, Michigan (at the intersection of Remick Drive and Stair Street), approximately one half mile from the bank. The van was still running and the front passenger door and passenger side door of the van were open. Blood was found on the right side of the driver's seat and on the floor board on the same side. In addition, blood was found on the steering wheel, right side arm rest (driver's seat), and the buckle for the seat belt (driver's seat). It is believed that Subject 2 was shot or injured during his get-away. A black Colt Cobra 38 caliber revolver, serial number LW33426, was recovered in the back seat of the van.

7. Subject 1 was not immediately identified as he did not have any form of identification on his person. Subject 1 was found to be wearing a bullet proof vest.

8. On August 30, 2014, someone called the Macomb County medical examiner's office from someone claiming to possibly be the uncle of Subject 1. The caller/uncle indicated that on August 29, 2014, a message was received by another relative of the family from the Facebook account of "Mar-Kel Brown" indicating that Ryan Holmes was dead. The caller/uncle knows that his nephew, Bernard Wesley Allen, was using the alias Ryan Holmes on Allen's Facebook page (ID: Bernard.b.allen.7). The caller/uncle has not been able to access the user's (Mar-Key Brown's) Facebook page since the message was sent and it appears that the account may have been deleted.

9. Affiant believes, based upon training and experience, and because Subject 1's identity was unknown until August 30, 2014, that "Mar-Kel Brown" was either involved or was told of the attempted robbery and the fatal shooting of Bernard Allen. And because of this, this user possibly deleted his/her Facebook page to avoid being identified.

10. Besides relaying the Facebook message, the caller also indicated that he lives in Miami, Florida, and indicated that his nephew, Bernard Wesley Allen, used to live in Miami. The caller/uncle indicated that Allen traveled to Michigan approximately 3-4 months ago, and was possibly staying with a friend known to the caller/uncle only as "Detroit."

11. Detectives from the Clinton Township Police Department contacted Allen's step-father, Esteban Velazquez who lives in Miami, Florida. According to Velazquez, Allen was hanging around with a black male known as "Detroit" before Allen left Miami. Velazquez believed that the individual known as "Detroit" is Jerome Bankston.

12. On September 2, 2014, FBI Task Force Officers assigned to the Miami field office made contact with Velazquez and Allen's mother, Desiree Velazquez. Velazquez and Desiree positively identified Allen as the individual depicted in an autopsy image of Subject 1 provided by the Macomb County medical examiner's office. They were also presented with an image of Jerome Anthony Bankston, and both identified Bankston as the person known as "Detroit" who had been friends with Allen while the two were in Miami.

13. Desiree advised that Bankston was in Miami in 2013, and was Allen's friend. Desiree further indicated that Bankston and Allen worked together for AT&T. Desiree advised that Bankston lived with her and Allen in Miami. After approximately three to four months, in late 2013, Bankston returned to Michigan. Desiree advised that Allen eventually traveled to Michigan and was living with Bankston and Bankston's brother, First Name Unknown Last (FNU) Name Unknown (LNU), at FNU LNU's home.

14. Desiree advised that she last spoke with Allen approximately two weeks ago. Allen told her that he needed money to pay his telephone bill and asked that she wire him money.

15. A query of public source information listed a previous address of 2109 NW 156th Street, Miami, Florida, for Bankston. This is the same address listed for Allen during a query of his driver's license information in Florida.

16. Affiant also believes, based upon the fact that Allen lived in Miami with Bankston, both worked together while Bankston was in Miami, and Allen was living with Bankston and Bankston's brother in Michigan, that Bankston knew or was possibly involved in the robbery.

17. Affiant knows, based upon training and experience, and based on conversations with other law enforcement officers, that Facebook users can utilize the private messaging feature on Facebook to communicate and/or plan their illegal activities in an attempt to hide from law enforcement. Therefore, Affiant believes that Allen possibly communicated via the Facebook private messaging to discuss and/or plan the robbery with Subject 2, and/or Bankston.

18. The Bank of America, 37370 Gratiot Avenue, Clinton Township, Michigan, is a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC).

FACEBOOK

19. Facebook owns and operates a free-access social networking website of the same name that can be accessed at <http://www.facebook.com>. Facebook allows its users to establish accounts with Facebook, and users can then use their accounts to share written news, photographs, videos, and other information with other Facebook users, and sometimes with the general public.

20. Facebook asks users to provide basic contact and personal identifying information to Facebook, either during the registration process or thereafter. This information may include the user's full name, birth date, gender, contact e-mail addresses, Facebook passwords, Facebook security questions and answers (for password retrieval), physical address (including city, state, and zip code), telephone numbers, screen names, websites, and other personal identifiers. Facebook also assigns a user identification number to each account.

21. Facebook users may join one or more groups or networks to connect and interact with other users who are members of the same group or network. Facebook assigns a group identification number to each group. A Facebook user can also connect directly with individual Facebook users by sending each user a "Friend Request." If the recipient of a "Friend Request" accepts the request, then the two users will become "Friends" for purposes of Facebook and can exchange communications or view information about each other. Each Facebook user's

account includes a list of that user’s “Friends” and a “News Feed,” which highlights information about the user’s “Friends,” such as profile changes, upcoming events, and birthdays.

22. Facebook users can select different levels of privacy for the communications and information associated with their Facebook accounts. By adjusting these privacy settings, a Facebook user can make information available only to himself or herself, to particular Facebook users, or to anyone with access to the Internet, including people who are not Facebook users. A Facebook user can also create “lists” of Facebook friends to facilitate the application of these privacy settings. Facebook accounts also include other account settings that users can adjust to control, for example, the types of notifications they receive from Facebook.

23. Facebook users can create profiles that include photographs, lists of personal interests, and other information. Facebook users can also post “status” updates about their whereabouts and actions, as well as links to videos, photographs, articles, and other items available elsewhere on the Internet. Facebook users can also post information about upcoming “events,” such as social occasions, by listing the event’s time, location, host, and guest list. In addition, Facebook users can “check in” to particular locations or add their geographic locations to their Facebook posts, thereby revealing their geographic locations at

particular dates and times. A particular user's profile page also includes a "Wall," which is a space where the user and his or her "Friends" can post messages, attachments, and links that will typically be visible to anyone who can view the user's profile.

24. Facebook allows users to upload photos and videos. It also provides users the ability to "tag" (i.e., label) other Facebook users in a photo or video. When a user is tagged in a photo or video, he or she receives a notification of the tag and a link to see the photo or video. For Facebook's purposes, the photos and videos associated with a user's account will include all photos and videos uploaded by that user that have not been deleted, as well as all photos and videos uploaded by any user that have that user tagged in them.

25. Facebook users can exchange private messages on Facebook with other users. These messages, which are similar to e-mail messages, are sent to the recipient's "Inbox" on Facebook, which also stores copies of messages sent by the recipient, as well as other information. Facebook users can also post comments on the Facebook profiles of other users or on their own profiles; such comments are typically associated with a specific posting or item on the profile. In addition, Facebook has a Chat feature that allows users to send and receive instant messages through Facebook. These chat communications are stored in the chat history for

the account. Facebook also has a Video Calling feature, and although Facebook does not record the calls themselves, it does keep records of the date of each call.

26. If a Facebook user does not want to interact with another user on Facebook, the first user can “block” the second user from seeing his or her account.

27. Facebook has a “like” feature that allows users to give positive feedback or connect to particular pages. Facebook users can “like” Facebook posts or updates, as well as webpages or content on third-party (*i.e.*, non-Facebook) websites. Facebook users can also become “fans” of particular Facebook pages.

28. Facebook has a search function that enables its users to search Facebook for keywords, usernames, or pages, among other things.

29. Each Facebook account has an activity log, which is a list of the user’s posts and other Facebook activities from the inception of the account to the present. The activity log includes stories and photos that the user has been tagged in, as well as connections made through the account, such as “liking” a Facebook page or adding someone as a friend. The activity log is visible to the user but cannot be viewed by people who visit the user’s Facebook page.

30. Facebook Notes is a blogging feature available to Facebook users, and it enables users to write and post notes or personal web logs (“blogs”), or to import their blogs from other services, such as Xanga, LiveJournal, and Blogger.

31. The Facebook Gifts feature allows users to send virtual “gifts” to their friends that appear as icons on the recipient’s profile page. Gifts cost money to purchase, and a personalized message can be attached to each gift. Facebook users can also send each other “pokes,” which are free and simply result in a notification to the recipient that he or she has been “poked” by the sender.

32. Facebook also has a Marketplace feature, which allows users to post free classified ads. Users can post items for sale, housing, jobs, and other items on the Marketplace.

33. In addition to the applications described above, Facebook also provides its users with access to thousands of other applications on the Facebook platform. When a Facebook user accesses or uses one of these applications, an update about that the user’s access or use of that application may appear on the user’s profile page.

34. Facebook uses the term “Neoprint” to describe an expanded view of a given user profile. The “Neoprint” for a given user can include the following information from the user’s profile: profile contact information; News Feed information; status updates; links to videos, photographs, articles, and other items; Notes; Wall postings; friend lists, including the friends’ Facebook user identification numbers; groups and networks of which the user is a member, including the groups’ Facebook group identification numbers; future and past

event postings; rejected “Friend” requests; comments; gifts; pokes; tags; and information about the user’s access and use of Facebook applications.

35. Facebook also retains Internet Protocol (“IP”) logs for a given user ID or IP address. These logs may contain information about the actions taken by the user ID or IP address on Facebook, including information about the type of action, the date and time of the action, and the user ID and IP address associated with the action. For example, if a user views a Facebook profile, that user’s IP log would reflect the fact that the user viewed the profile, and would show when and from what IP address the user did so.

36. Social networking providers like Facebook typically retain additional information about their users’ accounts, such as information about the length of service (including start date), the types of service utilized, and the means and source of any payments associated with the service (including any credit card or bank account number). In some cases, Facebook users may communicate directly with Facebook about issues relating to their accounts, such as technical problems, billing inquiries, or complaints from other users. Social networking providers like Facebook typically retain records about such communications, including records of contacts between the user and the provider’s support services, as well as records of any actions taken by the provider or user as a result of the communications.

37. Therefore, the computers of Facebook are likely to contain all the material described above, including stored electronic communications and information concerning subscribers and their use of Facebook, such as account access information, transaction information, and other account information.

INFORMATION TO BE SEARCHED AND THINGS TO BE SEIZED

38. I anticipate executing this warrant under the Electronic Communications Privacy Act, in particular 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A), by using the warrant to require Facebook to disclose to the government copies of the records and other information (including the content of communications) particularly described in Attachment B.

CONCLUSION

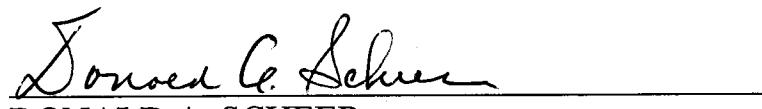
39. Based upon the facts set forth in this affidavit, there is probable cause to believe that the Facebook accounts of user names: (1) bernard.b.allen.7 (Bernard Wesley Allen) (ID: 100000946694739), and (2) Mar-Kel Brown (user ID unknown) contain evidence related to the crimes of bank robbery (in violation of 18 U.S.C. § 2113(a)) and use of a firearm during and in relation to a crime of violence (in violation of 18 U.S.C. § 924(c)).

40. This affidavit is being submitted for the limited purpose of establishing probable cause. I have set forth only those facts I believe are necessary to establish probable cause in this matter.

Respectfully submitted,


Juan M. Herrera
Special Agent, FBI

Subscribed and sworn to before me on September 5, 2014


DONALD A. SCHEER
UNITED STATES MAGISTRATE JUDGE

ATTACHMENT A

Property to Be Searched

This warrant applies to information associated with the following Facebook user IDs that are stored at premises owned, maintained, controlled, or operated by Facebook Inc., a company headquartered in Menlo Park, California:

1. ID: 100000946694739; Username: bernard.b.allen.7 (Bernard Welsey Allen)
2. ID: Unknown; Username: Mar-Kel Brown. “Mar-kel Brown” communicated via Facebook private messaging with user utilizing Facebook username darryne.thomas, on August 29, 2014, at approximately 12:29 p.m. It is believed that “Mar-Kel Brown” deleted his Facebook page after this communication.

ATTACHMENT B

Particular Things to be Seized

I. Information to be disclosed by Facebook

To the extent that the information described in Attachment A is within the possession, custody, or control of Facebook Inc. (“Facebook”), including any messages, records, files, logs, or information that have been deleted but are still available to Facebook, or have been preserved pursuant to a request made under 18 U.S.C. § 2703(f), Facebook is required to disclose the following information to the government for each user ID listed in Attachment A:

- (a) All contact and personal identifying information, including full name, user identification number, birth date, gender, contact e-mail addresses, Facebook passwords, Facebook security questions and answers, physical address (including city, state, and zip code), telephone numbers, screen names, websites, and other personal identifiers.
- (b) All activity logs for the account and all other documents showing the user’s posts and other Facebook activities;
- (c) All photos and videos uploaded by that user ID and all photos and videos uploaded by any user that have that user tagged in them;

- (d) All profile information; News Feed information; status updates; links to videos, photographs, articles, and other items; Notes; Wall postings; friend lists, including the friends' Facebook user identification numbers; groups and networks of which the user is a member, including the groups' Facebook group identification numbers; future and past event postings; rejected "Friend" requests; comments; gifts; pokes; tags; and information about the user's access and use of Facebook applications;
- (e) All other records of communications and messages made or received by the user, including all private messages, chat history, video calling history, and pending "Friend" requests;
- (f) All "check ins" and other location information;
- (g) All IP logs, including all records of the IP addresses that logged into the account;
- (h) All records of the account's usage of the "Like" feature, including all Facebook posts and all non-Facebook webpages and content that the user has "liked";
- (i) All information about the Facebook pages that the account is or was a "fan" of;
- (j) All past and present lists of friends created by the account;

- (k) All records of Facebook searches performed by the account;
- (l) All information about the user's access and use of Facebook Marketplace;
- (m) The types of service utilized by the user;
- (n) The length of service (including start date) and the means and source of any payments associated with the service (including any credit card or bank account number);
- (o) All privacy settings and other account settings, including privacy settings for individual Facebook posts and activities, and all records showing which Facebook users have been blocked by the account;
- (p) All records pertaining to communications between Facebook and any person regarding the user or the user's Facebook account, including contacts with support services and records of actions taken.

UNITED STATES DISTRICT COURT
for the
Eastern District of Michigan

In the Matter of the Search of
*(Briefly describe the property to be searched
or identify the person by name and address)*

Facebook Accounts related to Bernard Wesley Allen and
Mar-kel Brown, described more fully in Attachment A

Case:2:14-mc-51198
Judge: Steeh, George Caram
Filed: 09-05-2014 At 11:14 AM
IN RE:SEALED MATTER(ssw)(mlw)

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the Northern District of California
(identify the person or describe the property to be searched and give its location):
See Attachment A

See Attachment A

The person or property to be searched, described above, is believed to conceal (*identify the person or describe the property to be seized*):

See Attachment B

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property.

YOU ARE COMMANDED to execute this warrant on or before

September 19, 2014
(not to exceed 14 days)

in the daytime 6:00 a.m. to 10 p.m. at any time in the day or night as I find reasonable cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to United States Magistrate Judge _____
Duty Court _____.

I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box). for _____ days (not to exceed 30).

Until the facts justifying the later specific date of

Date and time issued: 09/05/2014 at 11:23 am

Sonora C. Scher
Judge's signature

City and state: Detroit, Michigan

Donald A. Scheer, United States Magistrate Judge
Printed name and title

AO 93 (Rev. 12/09) Search and Seizure Warrant (Page 2)

Return		
Case No.:	Date and time warrant executed:	Copy of warrant and inventory left with:
Inventory made in the presence of :		
Inventory of the property taken and name of any person(s) seized:		
Certification		
I declare under penalty of perjury that this inventory is correct and was returned along with the original warrant to the designated judge.		
Date:	<i>Executing officer's signature</i>	
<i>Printed name and title</i>		

ATTACHMENT A

Property to Be Searched

This warrant applies to information associated with the following Facebook user IDs that are stored at premises owned, maintained, controlled, or operated by Facebook Inc., a company headquartered in Menlo Park, California:

1. ID: 100000946694739; Username: bernard.b.allen.7 (Bernard Welsey Allen)
2. ID: Unknown; Username: Mar-Kel Brown. "Mar-kel Brown" communicated via Facebook private messaging with user utilizing Facebook username darryne.thomas, on August 29, 2014, at approximately 12:29 p.m. It is believed that "Mar-Kel Brown" deleted his Facebook page after this communication.

ATTACHMENT B

Particular Things to be Seized

I. Information to be disclosed by Facebook

To the extent that the information described in Attachment A is within the possession, custody, or control of Facebook Inc. ("Facebook"), including any messages, records, files, logs, or information that have been deleted but are still available to Facebook, or have been preserved pursuant to a request made under 18 U.S.C. § 2703(f), Facebook is required to disclose the following information to the government for each user ID listed in Attachment A:

- (a) All contact and personal identifying information, including full name, user identification number, birth date, gender, contact e-mail addresses, Facebook passwords, Facebook security questions and answers, physical address (including city, state, and zip code), telephone numbers, screen names, websites, and other personal identifiers.
- (b) All activity logs for the account and all other documents showing the user's posts and other Facebook activities;
- (c) All photos and videos uploaded by that user ID and all photos and videos uploaded by any user that have that user tagged in them;

- (d) All profile information; News Feed information; status updates; links to videos, photographs, articles, and other items; Notes; Wall postings; friend lists, including the friends' Facebook user identification numbers; groups and networks of which the user is a member, including the groups' Facebook group identification numbers; future and past event postings; rejected "Friend" requests; comments; gifts; pokes; tags; and information about the user's access and use of Facebook applications;
- (e) All other records of communications and messages made or received by the user, including all private messages, chat history, video calling history, and pending "Friend" requests;
- (f) All "check ins" and other location information;
- (g) All IP logs, including all records of the IP addresses that logged into the account;
- (h) All records of the account's usage of the "Like" feature, including all Facebook posts and all non-Facebook webpages and content that the user has "liked";
- (i) All information about the Facebook pages that the account is or was a "fan" of;
- (j) All past and present lists of friends created by the account;

- (k) All records of Facebook searches performed by the account;
- (l) All information about the user's access and use of Facebook Marketplace;
- (m) The types of service utilized by the user;
- (n) The length of service (including start date) and the means and source of any payments associated with the service (including any credit card or bank account number);
- (o) All privacy settings and other account settings, including privacy settings for individual Facebook posts and activities, and all records showing which Facebook users have been blocked by the account;
- (p) All records pertaining to communications between Facebook and any person regarding the user or the user's Facebook account, including contacts with support services and records of actions taken.